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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/763,676	04/30/2001	Richard L Pressley	12077US05	7887

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McAndrews Held & Malloy
Suite 3400
500 W Madison Street
Chicago, IL 60661

EXAMINER
UPTON, CHRISTOPHER

ART UNIT	PAPER NUMBER
1724	5

DATE MAILED: 12/10/2001

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

763676

Applicant(s)

Kressly et al

AS-5

Examiner

Updon

Group Art Unit

1724

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Status

- ☐ Responsive to communication(s) filed on _____
- ☐ This action is FINAL.
- ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 111; 453 O.G. 213.

Disposition of Claims

☒ Claim(s) 1-17

Of the above claim(s) _____ is/are pending in the application.

☐ Claim(s) _____ is/are withdrawn from consideration.

☒ Claim(s) 1-17 is/are allowed.

☐ Claim(s) _____ is/are rejected.

☐ Claim(s) _____ is/are objected to.

_____ are subject to restriction or election requirement.

Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
 - ☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been received.
 - ☐ received in Application No. (Series Code/Serial Number) _____
 - ☐ received in this national stage application from the International Bureau (PCT Rule 1.7.2(a)).
- *Certified copies not received: _____

Attachment(s)

- ☒ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____
- ☒ Notice of Reference(s) Cited, PTO-892
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Interview Summary, PTO-413
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Other _____

1. Claim 8 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 8 lacks antecedent basis for the apparatus on which the thickening step is performed.

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1, 3-8, 10 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Zlokarnik et al, Okumura et al, Chang, or Kite in view of Hayes et al, Tsumura et al, or Okey et al.

Zlokarnik, Okumura, Chang and Kite disclose biological treatment with jet aeration of recirculated biosolids solution, substantially as claimed. The claims differ in recitation of monitoring and adjusting a physical property, such as ORP, and adjusting the mixing of the solution with the gas. It is well known to use the ORP to control the oxygen in a biological treatment system, as exemplified by Hayes, Tsumura and Okey. It would therefore have been obvious for one of ordinary skill in

the art to monitor the ORP of Zlokarnik, Okumura, Chang and Kite, to control the aeration process.

With respect to claims 4-6, 10 and 11, it is submitted that either the adjustment of air and/or liquid will obviously affect the oxygenation of a jet aerator, and therefore are obvious alternative ways to control aeration failing to patentably distinguish over the prior art. With respect to claim 7 and 8, it is submitted that thickening and dewatering are well known and normally performed when sludge is to be treated by digestion, as disclosed by Hayes. It is submitted that the amount of thickening would obviously vary with the characteristics of the sludge and the reactor.

4. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claim 1 above, and further in view of Wolinski.

Claim 9 differs from claim 1 in recitation of maintaining a layer of foam on top of the reactor. It is known to maintain such a layer, as disclosed by Wolinski. It would therefore have been obvious for one of ordinary skill in the art to maintain a layer of foam in the process of the references applied to claim 1, to aid in maintaining the temperature.

5. The non-statutory double patenting rejection, whether of the obviousness-type or non-obviousness-type, is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent. *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761

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(CCPA 1982); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); and *In re Goodman*, 29 USPQ2d 2010 (Fed. Cir. 1993).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(b) and (c) may be used to overcome an actual or provisional rejection based on a non-statutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.78(d).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

6. Claims 1-17 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-8 of U.S. Patent No. 5,948,261. Although the conflicting claims are not identical, they are not patentably distinct from each other because the property monitored and adjusted may obviously be temperature. With respect to the recitation of monitoring of ORP, it is submitted that this is disclosed by the patent.

7. Claims 1-17 are directed to an invention not patentably distinct from claims 1-8 of commonly assigned patent no. 5,948,261. Specifically, the property monitored and adjusted may obviously be temperature, and the recitation of monitoring of ORP is disclosed by the patent.

Commonly assigned patent no. 5,948,261, discussed above, would form the basis for a rejection of the noted claims under 35 U.S.C. 103(a) if the commonly assigned case qualifies as prior art under 35 U.S.C. 102(f) or (g) and the conflicting inventions were not commonly owned at the time the invention in this application

was made. In order for the examiner to resolve this issue, the assignee is required under 37 CFR 1.78(c) and 35 U.S.C. 132 to either show that the conflicting inventions were commonly owned at the time the invention in this application was made or to name the prior inventor of the conflicting subject matter. Failure to comply with this requirement will result in a holding of abandonment of the application.

A showing that the inventions were commonly owned at the time the invention in this application was made will preclude a rejection under 35 U.S.C. 103(a) based upon the commonly assigned case as a reference under 35 U.S.C. 102(f) or (g).

8. Claims 1-17 are rejected under 35 U.S.C. 103(a) as being obvious over U. S. Patent No. 5,948,261.

The applied reference has a common inventor with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 103(a) might be overcome either by a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not the invention "by another," or by a showing of a date of invention for the instant application of any unclaimed subject matter prior to the effective U.S. filing date of the reference under 37 CFR 1.131, or by a showing that the inventions were commonly owned at the time of invention under 35 U.S.C. 103(c).

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The property monitored and adjusted may obviously be temperature, and the monitoring of ORP is disclosed by the patent.

9. A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101 which states that "whoever invents or discovers any new and useful process ... may obtain a patent therefor ..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to identical subject matter. *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894); *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

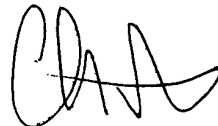
A statutory type (35 U.S.C. 101) double patenting rejection can be overcome by canceling or amending the conflicting claims so they are no longer coextensive in scope. The filing of a terminal disclaimer cannot overcome a double patenting rejection based upon 35 U.S.C. 101.

10. Claims 12-17 are rejected under 35 U.S.C. 101 as claiming the same invention as that of claims 16-21 of prior U.S. Patent No. 6,203,701. This is a double patenting rejection.

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

All references cited in U. S. Patent no. 6,203,701 are made of record.

12. Any inquiry concerning this communication should be directed to Christopher Upton at telephone number (703) 308-3741.



CHRISTOPHER UPTON
PRIMARY EXAMINER